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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,568	12/04/2000	Tomoshi Hirayama	SONY-U0595	4463

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EXAMINER

BATES, KEVIN T

ART UNIT PAPER NUMBER

2155

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/729,568

Applicant(s)

HIRAYAMA ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 5-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

This Office Action is in response to a communication made on October 12, 2004.

Claims 1-4 are pending in this application.

Claims 5-13 are withdrawn from consideration.

#### ***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

#### ***Election/Restrictions***

Applicant's election with traverse of computing price indexes in the reply filed on October 12, 2004 is acknowledged. The traversal is on the ground(s) that the search and examination of the entire application would not place a serious burden on the Examiner. This is not found persuasive because the classification of the differing inventions are found to be correct and accurate and in order for a proper search and examination would include searching all the multiple inventions and classes individually which would be a serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grosh (6195646) in view of Archibald (5825883).

Regarding claims 1, 3, and 4, Grosh discloses an information processing apparatus comprising: first acquiring means for acquiring the number of times information contents are downloaded over a network (Column 7, lines 63 – 64; Column 5, lines 32 – 42); and computing means for computing a pricing index for said information contents based on the number of times said information contents have been downloaded as acquired by said first acquiring means (Column 3, lines 46 – 52), but does not explicitly indicate a second acquiring means for acquiring the number of times said information contents are reproduced; and on the number of times said information contents have been reproduced as acquired by said second acquiring means.

Archibald discloses tracking copies of digital information as they are made and passed to other mediums (Column 5, lines 4 – 9), meters that information (Column 4, lines 15 – 19), and routes that information and accounting information to an authority (Column 3, lines 46 – 47). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use Archibald's teaching of tracking copies of digital content in a networked system in Grosh's disclosure of metering and weighing information to compute a price index because it eliminates the factor of piracy on sales information and informs more actual usage numbers (Column 5, lines 49 – 54).

Regarding claim 2, the combination of Grosh and Archibald discloses that said information contents include audio-visual information (Grosh, Column 1, lines 55 – 67; Archibald, Column 4, lines 41 – 44).

***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent No. 5634012 issued to Stefik, because it discloses tracking copies of electronic content.

U. S. Patent No. 6308162 issued to Ouimet, because it discloses calculating price models and demand based on factors such as sales.

U. S. Patent No. 6427140 issued to Ginter, because it discloses watching and authorizing copies of content to be made and distributed.

U. S. Patent No. 5752238 issued to Dedrick, because it discloses multiple pricing models based on sales and advertisements.

U. S. Patent No. 5819092 issued to Ferguson, because it discloses tracking and metering sales and downloads and using it for fee setting.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (571) 272-3980. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KB

KB  
March 31, 2005

*Bharat Barot*  
BHARAT BAROT  
PRIMARY EXAMINER